**BEFORE THE**
**MEDICAL BOARD OF CALIFORNIA**
**DEPARTMENT OF CONSUMER AFFAIRS**
**STATE OF CALIFORNIA**

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| **In the Matter of the First Amended Accusation Against:** | ) | |
| **HON YUEN CHAN, M.D.** | ) | **Case No. 8002014008887** |
| **Physician's and Surgeon's Certificate No. G49302** | ) | |
| **Respondent** | ) | |

## DECISION

**The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on April 27, 2018.**

**IT IS SO ORDERED: March 29, 2018.**

**MEDICAL BOARD OF CALIFORNIA**

**Ronald H. Lewis, M.D., Chair**
**Panel A**

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
JOSHUA M. TEMPLET
Deputy Attorney General
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455 Golden Gate Avenue, Suite 11000
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*Attorneys for Complainant*

**BEFORE THE**
**MEDICAL BOARD OF CALIFORNIA**
**DEPARTMENT OF CONSUMER AFFAIRS**
**STATE OF CALIFORNIA**

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| In the Matter of the First Amended Accusation Against:<br><br>**HON YUEN CHAN, M.D.**<br>**770 Mason Street**<br>**Vacaville, CA 95688**<br><br>**Physician's and Surgeon's Certificate No. G 49302**<br><br>Respondent. | Case No. 800-2014-008887<br><br>**STIPULATED SETTLEMENT AND DISCIPLINARY ORDER** |

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

## PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, via Joshua M. Templet, Deputy Attorney General.

2. The Respondent Hon Yuen Chan, M.D. (Respondent) is represented in this proceeding by attorney Robert W. Hodges, McNamara, Ney, Beatty, Slattery, Borges & Ambacher LLP, 3480 Buskirk Avenue, Suite 250, Pleasant Hill, CA 94523.

3. On or about November 29, 1982, the Board issued Physician's and Surgeon's Certificate No. G 49302 to the Respondent. The certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 800-2014-008887 and will expire on August 31, 2018, unless renewed.

## JURISDICTION

4. First Amended Accusation No. 800-2014-008887 (First Amended Accusation) was filed before the Board and is currently pending against the Respondent. Accusation No. 800-2014-008887 and all other statutorily required documents were properly served on the Respondent on February 2, 2017. The Respondent timely filed his Notice of Defense contesting the Accusation.

5. The First Amended Accusation is attached as **Exhibit A** and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

6. The Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in the First Amended Accusation. The Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. The Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. The Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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## CULPABILITY

9. The Respondent understands and agrees that the charges and allegations in the First Amended Accusation, if proven at a hearing, constitute cause for imposing discipline on his Physician's and Surgeon's Certificate.

10. For the purpose of resolving the First Amended Accusation without the expense and uncertainty of further proceedings, the Respondent agrees that, at a hearing, the Complainant could establish a factual basis for the charges in the First Amended Accusation, and that the Respondent hereby gives up his right to contest those charges.

11. The Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

## CONTINGENCY

10. This stipulation shall be subject to approval by the Board. The Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by the Respondent or his counsel. By signing the stipulation, the Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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## DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 49302 issued to the Respondent, Hon Yuen Chan, M.D., is revoked. However, the revocation is stayed and the Respondent is placed on probation for five (5) years with the following terms and conditions:

1. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION. The Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedule V of the Act. The Respondent is prohibited from ordering, prescribing, dispensing, administering, furnishing, or possessing Schedules II to IV controlled substances for the first two (2) years of probation and until the Respondent has demonstrated successful completion of a clinical competence assessment program. Upon demonstration of successful completion of a clinical competence assessment program and two (2) years of probation, the Respondent's prescribing privileges shall be fully restored.

During the time the Respondent's prescribing privileges are restricted as set forth above, the Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. If the Respondent forms the medical opinion, after an appropriate prior examination and medical indication, that a patient's medical condition may benefit from the use of marijuana, the Respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, the Respondent shall inform the patient or the patient's primary caregiver that the Respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on the Respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. The

Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits the Respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

The Respondent shall immediately surrender Respondent's current DEA permit to the Drug Enforcement Administration for cancellation and reapply for a new DEA permit limited to those Schedules authorized by this order. Within 15 calendar days after the effective date of this Decision, the Respondent shall submit proof that he has surrendered his DEA permit to the Drug Enforcement Administration for cancellation and re-issuance. Within 15 calendar days after the effective date of issuance of a new DEA permit, the Respondent shall submit a true copy of the permit to the Board or its designee.

2. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES. The Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by him, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and address of the patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

The Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

3. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, the Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours for the first year of probation, and which shall not be less than 20 hours per year for each subsequent year of probation. The educational program(s) or course(s) shall be aimed at

correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course.

4. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, the Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. The Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. The Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after the Respondent's initial enrollment. The Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at the Respondent's expense and shall be in addition to the CME requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the First Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

The Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

5. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, the Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. The Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. The Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after the Respondent's initial enrollment.

The Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at the Respondent's expense and shall be in addition to the CME requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the First Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

The Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

6. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days of the effective date of this Decision, the Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. The Respondent shall successfully complete the program not later than twelve months after the Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of the Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to the Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require the Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. The Respondent shall pay all expenses associated with the clinical competence assessment program.

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At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the Respondent has demonstrated the ability to practice safely and independently. Based on the Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting the Respondent's practice of medicine. The Respondent shall comply with the program's recommendations.

Determination as to whether the Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If the Respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, the Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If the Respondent does not successfully complete the clinical competence assessment program, the Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

7. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this Decision, the Respondent shall submit to the Board or its designee for prior approval as a practice monitor the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with the Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in the Respondent's field of practice, and must agree to serve as the Respondent's monitor. The Respondent shall pay all monitoring costs.

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The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, the Respondent's practice shall be monitored by the approved monitor. The Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If the Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, the Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitors shall submit a quarterly written report to the Board or its designee that includes an evaluation of the Respondent's performance, indicating whether the Respondent's practices are within the standards of practice of medicine and whether the Respondent is practicing medicine safely. It shall be the sole responsibility of the Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within ten calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, the Respondent shall, within five calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If the Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, the Respondent shall

receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. The Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, the Respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. The Respondent shall participate in the professional enhancement program at the Respondent's expense during the term of probation.

8. PROHIBITED PRACTICE. During the first three (3) years of probation, the Respondent is prohibited from treating patients for chronic pain. After the effective date of this Decision, all patients being treated by the Respondent shall be notified that the Respondent is prohibited from treating patients for chronic pain. Any new patients must be provided this notification at the time of their initial appointment.

The Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. The Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

9. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and First Amended Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to the Respondent, at any other facility where the Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to the Respondent. The Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

10. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, the Respondent is prohibited from supervising physician assistants and advanced practice nurses.

11. OBEY ALL LAWS. The Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

12. QUARTERLY DECLARATIONS. The Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

The Respondent shall submit quarterly declarations not later than ten calendar days after the end of the preceding quarter.

13. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

The Respondent shall comply with the Board's probation unit.

Address Changes

The Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

The Respondent shall not engage in the practice of medicine in the Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

The Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence outside California

The Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

In the event the Respondent should leave the State of California to reside or to practice, the Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

14. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. The Respondent shall be available in person upon request for interviews either at the Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

15. NON-PRACTICE WHILE ON PROBATION. The Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of the Respondent's return to practice. Non-practice is defined as any period of time the Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If the Respondent resides in California and is considered to be in non-practice, the Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program that has been approved by the Board or its designee shall not be considered non-practice and does not relieve the Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event the Respondent's period of non-practice while on probation exceeds 18 calendar months, the Respondent shall successfully complete the Federation of State Medical Boards' Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's

"Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

The Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a respondent residing outside of California will relieve the Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

16. COMPLETION OF PROBATION. The Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, the Respondent's certificate shall be fully restored.

17. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If the Respondent violates probation in any respect, the Board, after giving the Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against the Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

18. LICENSE SURRENDER. Following the effective date of this Decision, if the Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, the Respondent may request to surrender his or her license. The Board reserves the right to evaluate the Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, the Respondent shall within 15 calendar days deliver his wallet and wall certificate to the Board or its designee and the Respondent shall no longer practice medicine. The Respondent will no longer be

subject to the terms and conditions of probation. If the Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

19. PROBATION MONITORING COSTS. The Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Board and delivered to the Board or its designee no later than January 31 of each calendar year.

## ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Robert W. Hodges. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: 2/22/2018

HON YUEN CHAN, M.D.
*Respondent*

I have read and fully discussed with the Respondent, Hon Yuen Chan, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 2/25/2018

ROBERT W. HODGES
*Attorney for Respondent*

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## ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board.

Dated: 2/25/2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General

JOSHUA M. TEMPLET
Deputy Attorney General
*Attorneys for Complainant*

SF2016103878

# Exhibit A

**First Amended Accusation No. 800-2014-008887**

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*Attorneys for Complainant*



**BEFORE THE**
**MEDICAL BOARD OF CALIFORNIA**
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| In the Matter of the First Amended Accusation Against:<br><br>**HON YUEN CHAN, M.D.**<br>**770 Mason Street**<br>**Vacaville, CA 95688**<br><br>**Physician's and Surgeon's Certificate No. G 49302,**<br><br>Respondent. | Case No. 800-2014-008887<br><br>**FIRST AMENDED ACCUSATION** |

Complainant alleges:

## PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this First Amended Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about November 29, 1982, the Medical Board issued Physician's and Surgeon's Certificate Number G 49302 to Hon Yuen Chan, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2018, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2004 of the Code states, in relevant part:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board."

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

6. Section 2234 of the Code states, in relevant part:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence."

7. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

8. Section 725 of the Code provides, in relevant part, that repeated acts of clearly excessive prescribing or administering of drugs as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon.

PERTINENT DRUGS

9. The following controlled substances and/or dangerous drugs are involved in this proceeding:

A. **Carisoprodol** is a trade name for **Soma**, a muscle-relaxant and sedative. Since the effects of carisoprodol and alcohol or carisoprodol and other central nervous system depressants or psychotropic drugs may be addictive, appropriate caution should be exercised with patients who take more than one of these agents simultaneously. Carisoprodol is a dangerous drug as defined by section 4022 of the Code and a Schedule IV controlled substance and narcotic as defined by section 11057 of the Health and Safety Code and by section 1308.14 of Title 21 of the Code of Federal Regulations.

B. **Dilaudid** is a trade name for **hydromorphone hydrochloride.** Dilaudid is a hydrogenated ketone of morphine and is a narcotic analgesic. Its principle therapeutic use is relief of pain. Psychic dependence, physical dependence, and tolerance may develop upon repeated administration of narcotics; therefore, Dilaudid should be prescribed and administered with

caution. Dilaudid is a dangerous drug as defined by section 4022 of the Code, and a Schedule II controlled substance as defined by section 11055 of the Health and Safety Code and by section 1308.12 of Title 21 of the Code of Federal Regulations.

C. **Endocet** is a trade name for **oxycodone** and **acetaminophen.** Oxycodone is a semisynthetic narcotic analgesic with multiple actions qualitatively similar to those of morphine. Oxycodone can produce drug dependence of the morphine type and, therefore, has the potential for being abused. The strength of a tablet is indicated by mg of oxycodone/mg of acetaminophen, e.g., 10/325 reflects 10 mg. of oxycodone and 325 mg of acetaminophen. The maximum 24-hour dosage of acetaminophen should not exceed 4000 mg. At high levels, acetaminophen can cause liver toxicity and even death. Endocet is a dangerous drug as defined by section 4022 of the Code, and a Schedule II controlled substance as defined by section 11055 of the Health and Safety Code and by section 1308.12 of Title 21 of the Code of Federal Regulations.

D. **Fentanyl** is an opioid analgesic. **Duragesic** is a trade name for a **fentanyl transdermal system.** Fentanyl's primary effects are anesthesia and sedation. Fentanyl is a strong opioid medication and is indicated only for treatment of chronic pain (such as that of malignancy) that cannot be managed by lesser means and requires continuous opioid administration. Fentanyl presents a risk of serious or life-threatening hypoventilation. Fentanyl is a dangerous drug as defined by section 4022 of the Code, and a Schedule II controlled substance as defined by section 11055 of the Health and Safety Code and by section 1308.12 of Title 21 of the Code of Federal Regulations.

E. **MS Contin** is a trade name for **morphine sulfate** controlled release tablets. Morphine sulfate is for use in patients who require a potent opioid analgesic for relief of moderate to severe pain. Morphine can produce drug dependence and has a potential for being abused. Tolerance and psychological and physical dependence may develop upon repeated administration. Morphine is a dangerous drug as defined by section 4022 of the Code, and a Schedule II controlled substance and narcotic as defined by section 11055 of the Health and Safety Code and by section 1308.12 of Title 21 of the Code of Federal Regulations.

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F. **Norco** is a trade name for **hydrocodone bitartrate with acetaminophen or hydrocodone/APAP.** Norco is an opioid analgesic. Hydrocodone can produce drug dependence and, therefore, has the potential for being abused. It has a central nervous system (CNS) depressant effect. Norco is a dangerous drug as defined by section 4022 of the Code, and a Schedule II controlled substance and narcotic as defined by section 11055 of the Health and Safety Code and by section 1308.12 of Title 21 of the Code of Federal Regulations.

G. **OxyContin** is a trade name for **oxycodone hydrochloride** controlled-release tablets. Oxycodone is a pure agonist opioid whose principal therapeutic action is analgesia. Other therapeutic effects of oxycodone include anxiolysis, euphoria, and feelings of relaxation. Respiratory depression is the chief hazard from all opioid agonist preparations. OxyContin should be used with caution and started in a reduced dosage (1/3 to 1/2 of the usual dosage) in patients who are concurrently receiving other CNS depressants. Oxycodone is a dangerous drug as defined by section 4022 of the Code, and a Schedule II controlled substance and narcotic as defined by section 11055 of the Health and Safety Code and by section 1308.12 of Title 21 of the Code of Federal Regulations.

H. **Promethazine with codeine cough syrup** is a phenothiazine antihistamine and narcotic cough suppressant combination. It is used to treat cough and other upper respiratory symptoms caused by allergies or the common cold. Promethazine with codeine cough syrup is a dangerous drug as defined by section 4022 of the Code, and a Schedule V controlled substance as defined by section 11058 of the Health and Safety Code and by section 1308.15 of Title 21 of the Code of Federal Regulations.

I. **Ultram** is a trade name for **tramadol**, a narcotic-like pain reliever. Ultram is used to treat moderate to severe pain. Ultram is a dangerous drug as defined by section 4022 of the Code and a Schedule IV controlled substance as defined by section 11057 of the Health and Safety Code and by section 1308.14 of Title 21 of the Code of Federal Regulations.

J. **Valium** is a trade name for **diazepam**, a psychotropic drug used for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety. Diazepam can produce psychological and physical dependence and it should be prescribed with caution

particularly to addiction-prone individuals (such as drug addicts and alcoholics) because of the predisposition of such patients to habituation and dependence. Valium is a dangerous drug as defined by section 4022 of the Code and a Schedule IV controlled substance as defined by section 11057 of the Health and Safety Code and by section 1308.14 of Title 21 of the Code of Federal Regulations.

K. **Xanax**, a trade name for **alprazolam** tablets, belongs to a class of medications called benzodiazepines which act on the brain and nerves to produce a calming effect. Xanax is used to treat anxiety disorders, panic disorders, and anxiety caused by depression. Xanax is a dangerous drug as defined by section 4022 of the Code and a Schedule IV controlled substance as defined by section 11057 of the Health and Safety Code and by section 1308.14 of Title 21 of the Code of Federal Regulations.

**FIRST CAUSE FOR DISCIPLINE**

**(Re: Patient KH)**

**(Gross Negligence/Repeated Negligent Acts/Incompetence)**

10. On or about February 3, 2012 Respondent assumed care of Patient KH[1] as his primary care physician (PCP). On this date KH, a 28-year-old man, complained of left knee pain of eight months duration and episodic, multi-year left sided sciatica. KH reported a history of anxiety, panic attacks, insomnia, and he reported a prior history of mental health treatment. The patient had previously been followed at Kaiser and he reported that an x-ray of the knee done at Kaiser was normal. KH reported that he had tried physical therapy for the knee but that it did not help. KH reported that he was currently taking Norco for pain and Valium, as needed, for anxiety and muscle spasms.

11. On physical examination, Respondent noted that KH had slight tenderness of the left knee, but that he was able to bear weight. There were no other abnormal physical signs noted. Respondent ordered an MRI study of the left knee and he referred KH for an orthopedic consultation. Respondent prescribed Norco 10/325 mg, #240 (1 tablet every 3 hours as needed);

[1] Patient names are kept confidential to protect their right of privacy but will be identified to Respondent in discovery.

Valium 10 mg, #60 (1 tablet twice daily as needed); and, Ambien[2] 10 mg, #30 (1 tablet at bedtime as needed).

12. MRI done on February 9, 2012 revealed a moderate sized tear of the medial meniscus. On or about the same date, KH reported inadequate pain control with Norco and Respondent added oxycodone 15 mg, #240 (1 tablet every 3 hours as needed). On or about March 1, 2012, KH reported that he was taking 2 of the oxycodone tablets in order for them to work. Respondent prescribed oxycodone 30 mg., 1 tablet every 3 hours. On March 5, 2012, Respondent authorized an early refill of KH's Valium after KH reported that he had lost his prescription. Pharmacy prescribing records for Patient KH indicate that KH received prescriptions for a 30-day supply of Valium on February 28, March 6, 21, and 30, 2012.

13. On or about March 23, 2012, KH had a left meniscectomy. The treating Orthopedist referred KH for post-op therapy. Respondent saw KH on May 11, 2012, at which time KH reported that he had spilled his oxycodone down the drain and he requested a refill. On examination Respondent noted that KH had slight tenderness in the left knee but that he was able to bear weight and that KH had acute exacerbation of his sciatica, for which Respondent added gabapentin[3] 100 mg, three times a day. Refills were given for oxycodone, #240, and Valium, which was increased to #90 without explanation in the record. Patient KH signed a Pain Medication Agreement on this date agreeing to obtain his prescriptions from a single pharmacy. No specific medications are listed on the Agreement.

14. Respondent's records document that on May 29, 2012, KH called his office to report that, while travelling, his luggage which contained all of his prescriptions was lost. KH requested a prescription for Norco. Respondent authorized an early refill of Norco, #120.

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[2] **Ambien**, a trade name for **zolpidem tartrate**, is a sedative, also called a hypnotic, used to treat insomnia. It is a dangerous drug as defined by section 4022 of the Code and a Schedule IV controlled substance as defined by section 11507 of the Health and Safety Code and by section 1308.14 of Title 21 of the Code of Federal Regulations.

[3] **Gabapentin** (trade name **Neurontin)** is an anti-epileptic medication, also called an anticonvulsant, used in adults to treat nerve pain caused by herpes virus or shingles and other nerve pain. It is a dangerous drug as defined by section 4022 of the Code.

15. On August 17, 2012, KH was seen by Respondent and the condition of the left knee was unchanged. KH reported that he was unable to tolerate oxycodone at work and that he could not tolerate gabapentin. Respondent noted that he would prescribe Norco for use during work hours. Refills were given for Norco, #240, and oxycodone, #240.

16. On December 21, 2012, KH reported a slight increase in anxiety and knee pain, and he reported feeling addicted to his pain medications, which he stated were not helping. On examination, the condition of the left knee remained unchanged. KH's medications at this time included oxycodone 30 mg, #240; Norco 10/325 mg, #240; Valium 10 mg, # 60; and, Ambien 10 mg, # 30. Respondent continued KH's prescriptions for oxycodone and Norco and he prescribed Effexor[4] 75 mg daily. Respondent noted that he would change Valium to Xanax 2 mg, #90, and he again tried the patient on gabapentin for sciatica exacerbation, to titrate up to 300 mg, three times a day. Pharmacy prescribing records for Patient KH indicate that KH continued to receive monthly prescriptions for Valium at least through September 2013.

17. Respondent's records document that throughout 2013, KH continued to complain of left knee pain and anxiety symptoms. Respondent failed to document the patient's self-report of pain and physical function, his assessment of the KH's physical function, objectives to treatment, nor the patient's progress with treatment. Respondent's records document multiple instances of KH reporting lost prescriptions, requests for early refills, and problems getting prescriptions filled at multiple pharmacies. On or about February 27, 2013, Respondent sent KH a warning letter that he was not following the terms of the Pain Medication Agreement signed in May 2012 because KH had been getting prescriptions filled at multiple pharmacies and he had requested early refills multiple times. On or about October 29, 2013, KH reported that he was fired from his job because his employer believed it was unsafe for him to work while on his medications.

18. On February 4, 2014, Respondent saw KH and noted that KH continued to have anxiety attacks associated with palpitation, tachycardia and insomnia, and that he continued to

[4] **Effexor**, a trade name for **venlafaxine hydrochloride**, is an antidepressant used to treat major depressive disorder, anxiety, and panic disorder. It is a dangerous drug as defined by section 4022 of the Code.

have sciatica pain requiring pain medication. Respondent refilled KH's prescriptions for oxycodone, Norco, Valium, Xanax, Effexor, Ambien, and gabapentin.

19. On August 4, 2014, KH complained of upper back pain and he reported having a seizure in October 2013 while he was out-of-state. KH reported he was seen at an Emergency Room and that he had a negative work up. On examination, Respondent noted mild thoracic and lumbar spine tenderness and he referred KH for lab work and x-rays of the spine. No further seizure work up was done. Respondent noted that Ambien was ineffective and he prescribed Trazadone[5] 100 mg (1 tablet at bedtime). Respondent also noted that Effexor was no longer effective and he prescribed Paxil[6] 10 mg (1 tablet at bedtime). KH's Pain Medication Agreement was "updated" on this date. No specific medications are listed on the Agreement.

20. On August 19, 2014, KH sent Respondent an e-mail reporting that he had been experiencing erectile dysfunction (ED) and asking whether it could be caused by his medications. Respondent advised KH that all of his pain and anxiety medications can potentially cause ED and he told KH he should try to wean off his medications. On September 26, 2014, Respondent noted in the record that he had spoken with KH and that they had agreed to reduce his oxycodone from #240 to #180/month.

21. On October 5, 2014, KH was found unresponsive at home and was in full cardiorespiratory arrest when paramedics arrived at the home. KH was transported to Queen of the Valley Hospital in Napa, where he was found to have evidence of severe anoxic brain injury. He was declared brain dead and pronounced dead on October 7, 2014. A toxicology report showed KH's blood levels of Xanax to be in the potentially toxic range and his blood levels of oxycodone to be in the toxic range.

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[5] **Trazadone hydrochloride** is an antidepressant used to treat depression and may also be used for relief of an anxiety disorder. It is a dangerous drug as defined section 4022 of the Code.

[6] **Paxil**, a trade name for **paroxetine hydrochloride**, is an antidepressant in a group of drugs called selective serotonin reuptake inhibitor (SSRI). It is used to treat, among other conditions, depression, obsessive-compulsive disorder, and anxiety disorders. It is a dangerous drug as defined by Business and Professions Code section 4022.

22. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234 (b) and/or (c) and/or (d) of the Code in that Respondent was grossly negligent, and/or he engaged in repeated acts of negligence, and/or he was incompetent in the practice of medicine in his care and treatment of Patient KH, including but not limited to the following:

A. Respondent failed to assess and adequately document the rationale for the ongoing prescribing and escalation of opiate therapy and for the use of combination opiates.

B. Respondent failed to adequately assess and document physical findings regarding KH's reports of ongoing knee pain.

C. Respondent failed to have diagnostic evaluation done of KH's lumbar spine despite putatively refractory sciatica symptoms.

D. Respondent failed to consider and document the rationale for continuing to prescribe oxycodone #240 monthly after advising the patient to avoid oxycodone in favor of Norco during work hours.

E. Respondent failed to consider and document a plan for mental health evaluation to address KH's ongoing anxiety, which was not improving with either anti-depressants or the unusual combination of Xanax and Valium.

F. Respondent demonstrated a lack of knowledge regarding morphine milligram equivalent (MME) dosing guidelines and regarding the necessity to document explanation for deviations from the guidelines.

G. Respondent failed to obtain and document informed consent, particularly with regard to the risks of combining opiate agents and combining benzodiazepine and opiate medications.

H. Respondent failed to determine and document objectives by which to evaluate the patient's progress with treatment and he failed to document periodic review of the patient's progress, such as pain scales, physical functioning, and urine drug screening.

I. Respondent failed to consider and/or to refer KH for evaluation of the recurrent sciatica, and/or for mental health consultation, and/or for addiction medicine consultation.

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**SECOND CAUSE FOR DISCIPLINE**

**(Re: Patient JU)**

**(Gross Negligence/Repeated Negligent Acts/Excessive Prescribing)**

23. Patient JU, a 31-year-old man, first saw Respondent in or about September 2010. On June 14, 2011, Respondent saw JU and noted that he was hospitalized in January 2011 due to loss of consciousness. A urine drug screen upon JU's admission to the hospital was positive for benzodiazepines, opiates, and marijuana. There was also alcohol in the patient's blood. JU improved after the administration of Narcan. The hospital diagnosis was opiate and benzodiazepine intoxication.

24. Respondent's history and physical of June 14, 2011 notes a prior history of methamphetamine abuse (not active), hypertension, obesity, hepatitis, and chronic left elbow pain following two surgeries in or about 2002 and 2006, reportedly to remove an hemangioma. Respondent's physical examination makes no mention of abnormalities of the left elbow. Respondent continued JU's prescription for Norco 10/325 mg, #240 (1 tablet every 3 hours as needed). On July 29, 2011, Respondent referred JU to orthopedics regarding the elbow pain. Respondent's records do not contain any follow up to the orthopedic referral.

25. Controlled Substance Utilization Review and Evaluation System (CURES) Reports and pharmacy prescribing records for Patient JU indicate that from June 2011 through approximately April 2013, JU routinely received multiple early refills of Norco #240 prescribed by Respondent. Pharmacy prescribing records indicate that JU obtained his Norco prescriptions from at least four different pharmacies, and that the total monthly amounts obtained varied from 720 tablets/month (e.g., May, June and July 2012) to as many as 1200 tablets/month (e.g., January, March and April 2012). Respondent's records make no mention of abnormal physical findings of the left elbow or other medical indication for the ongoing prescribing of Norco. Respondent failed to document explanation for, or discussion with JU, regarding the ongoing early refills of Norco, or for the excessive amounts of Norco prescribed to JU.

26. On August 11, 2011, JU complained of cough and reported missing work due to flu like illness. Respondent prescribed Phenergan with Codeine cough syrup 6.25/10 mg, 5 mL every

4-6 hours as needed. Respondent's records document that throughout the remainder of 2011 through at least January 2013, JU regularly reported complaints of cough and/or sinus congestion. CURES Reports and pharmacy prescribing records for Patient JU indicate that during August, October and November 2011, JU received weekly prescriptions for Phenergan with Codeine cough syrup, 240 ml, from Respondent. From December 2011 through approximately January 2013, JU received monthly prescriptions for Phenergan with Codeine cough syrup, 480 ml, from Respondent. Respondent failed to refer JU for evaluation of the chronic cough and rhinosinusitis symptoms.

27. On November 29, 2011, JU signed a Pain Medication Agreement for Norco, to be picked up at Safeway in Vacaville only.

28. Respondent's records document multiple missed or cancelled appointments by JU, and numerous instances of JU reporting his medications lost or stolen or confiscated by TSA personnel at the airport. Respondent routinely provided JU with medication refills.

29. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234 (b) and/or (c) and/or section 725 of the Code in that Respondent was grossly negligent, and/or he engaged in repeated acts of negligence, and/or he excessively prescribed medications in his care and treatment of Patient KH, including but not limited to the following:

A. Respondent failed to document any physical examination abnormalities of the painful elbow, and/or a detailed history of the pain impact on physical or psychological functioning, and/or further diagnostic evaluation after the referral to orthopedics.

B. Respondent failed to determine and document objectives by which to evaluate the patient's progress with opiate therapy and he failed to consider additional treatment modalities beyond opiate therapy.

C. Respondent failed to initiate a treatment plan for evaluation of the patient's apparently chronic cough and rhinosinusitis symptoms.

D. Respondent failed to obtain and document informed consent with regard to the risks of chronic opiate therapy.

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E. Respondent prescribed excessive amounts of Norco and/or Phenergan with Codeine cough syrup without documentation of an adequate physical examination and medical indication.

F. Respondent failed to perform and document periodic review of the patient's treatment plan and medications, such as pain scales, the patient's compliance with prescribed medications and response to treatment.

G. Respondent failed to consider and refer JU for pain or addiction medicine consultation, and/or for allergy or pulmonology consultation.

H. Respondent failed to consider and/or to modify JU's therapy in response to red flags suggesting JU may be abusing and/or diverting his medications.

**THIRD CAUSE FOR DISCIPLINE**

**(Repeated Negligent Acts/Incompetence)**

**PATIENT NR**

30. On or about May 1, 2012 Respondent assumed care of Patient NR as his PCP. On this date NR, a 40-year-old man, complained of, among other things, left leg pain for 2 years. The patient reported sustaining a left ankle fracture in 2010 with three subsequent surgeries with placement of fixation hardware and subsequent removal of some of the hardware, last surgery in August 2011. The patient reported that chronic pain persists in spite of multiple surgeries, and that the pain was getting worse leading to occasionally unsteady gait. NR also reported a history of asthma, smoking, and oral thrush. NR reported being on Endocet 5/325 mg tablets.

31. On physical examination, Respondent noted tenderness in the left ankle area, no calf swelling or tenderness, and that NR was able to ambulate without assistance. No pain score was noted. Labs were ordered and Respondent referred NR for an orthopedic consultation. Respondent prescribed Endocet 10/325 mg, one tablet every 3 hours as needed, #240; Ultram 50 mg, 4 times a day, #120; and, gabapentin 100 mg, 3 times a day to titrate gradually, #90.

32. On June 21, 2012, NR reported that the ankle was still hurting with Endocet. Respondent noted that NR had been seen for orthopedic consultation but that no surgery was offered. Respondent changed NR's pain medication regimen to MS Contin 15 mg, 3 times a day and either immediate release (IR) morphine sulfate 15 mg or oxycodone 15 mg, every 3 hours as

needed. At the patient's request Respondent referred NR for orthopedic consultation for a second opinion. On August 10, 2012, NR reported that he did not fill the MS Contin prescription and that he was taking the oxycodone, which Respondent refilled.

33. Respondent's records note that on October 31, 2012 NR had surgery to remove some broken hardware in the left ankle. On January 3, 2013, NR reported that he had increased left ankle pain following one episode of strenuous physical exertion. Respondent increased oxycodone to 30 mg tablets, #240, and he again prescribed MS Contin 15 mg., 1 tablet 2-3 times a day, #90. On April 12, 2013, NR reported that he could not take the MS Contin due to the side effect of headaches. Respondent prescribed sustained release oxycodone (OxyContin) 20 mg. twice a day, #60. On May 31, 2013, NR reported ongoing ankle pain and swelling with too much walking. Respondent increased the strength of OxyContin to 40 mg tablets, twice daily.

34. On July 12, 2013, NR reported memory loss in recent months. Respondent referred the patient for a neurology consultation. X-rays of the left ankle taken this date revealed a well healed distal left tibial fracture with no evidence of loosening of the existing hardware. On August 16, 2013, NR reported that he had seen the neurologist and that it was recommended that he taper off his narcotic medications. This was not done as NR continued to complain of poor pain control.

35. In October 2013, NR notified Respondent that due in part to the "immense pain" in his ankle he planned to take as much as three months off work. Throughout the remainder of 2013 and into 2014, Respondent continued NR on the monthly regimen of oxycodone 30 mg., #240, and OxyContin 40 mg., #60. On January 24, 1014, NR signed a Pain Medication Agreement for oxycodone 30 mg., #240, and OxyContin 40 mg., #60, to be picked up at Costco pharmacy only.

36. On May 12, 2014, NR sent a message to Respondent requesting a prescription for carisoprodol for tense back muscles. Without seeing NR, Respondent prescribed carisoprodol 350 mg., #120, which was refilled monthly at least through December 2014. On May 27, 2014, NR reported increased ankle pain. Respondent increased NR's prescription for oxycodone to #300.

37. On June 13, 2014, NR reported gradually increased ankle pain over the prior three weeks with no new trauma or mechanical fall. On examination, Respondent noted significant

limping and local tenderness at the left ankle without effusion. Respondent prescribed a walker. X-rays of the ankle were ordered and revealed no significant change when compared to the ankle x-rays taken in July 2013. On or about June 19, 2014, Respondent referred NR for an orthopedic evaluation.

38. On August 15, 2014, Respondent saw NR and noted that the patient could no longer afford OxyContin and that Fentanyl transdermal patches, 25 mcg every three days, were prescribed. Respondent increased NR's oxycodone prescription at or about this time to #480. Respondent also noted the possibility of amputation of the painful left ankle was discussed but that no decision had been made.

39. In September 2014, Respondent referred NR to a pain management clinic for consideration of alternative treatment options. On September 17, 2014, Respondent noted that he had discussed with NR reducing his monthly prescription of oxycodone from 480 to 360 tablets in order to reduce NR's dependency on the medication. On November 14, 2014, Respondent discussed with NR continued tapering of his oxycodone from 300 to 240 tablets monthly.

40. Respondent's records indicate that in or about December 2014, Patient NR moved to another city and Respondent no longer treated the patient.

**PATIENT NZ**

41. On or about May 4, 2012 Respondent assumed care of Patient NZ as her PCP. On this date NZ, a 44-year-old woman, saw Respondent in follow up to a recent hospital emergency room visit for abdominal pain. Patient NZ was highly complex, medically, with a history of chronic pancreatitis, anemia, morbid obesity, chronic post-surgical neck pain, depression, and Behcet's disease (a rare systemic autoimmune disorder). NZ suffered many complications of Behcet's, including septic emboli, venous thrombotic disease, and repeated skin infections due to Behcet's-related ulcers. She reported high levels of chronic pain.

42. Respondent's care was reviewed through approximately August 2015. NZ reported high levels of chronic pain during the time she was treated by Respondent. During the course of his treatment of Patient NZ, Respondent routinely prescribed various combinations of opiates and benzodiazepines, at times concomitantly, including Dilaudid, Norco, morphine sulfate,

OxyContin, Fentanyl, Xanax, Ambien, and Soma. Respondent's records do not document discussion with NZ of the risks of opiate and benzodiazepine medications, including the risk of potential overdose.

43. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234 (c) and/or (d) of the Code in that Respondent engaged in repeated acts of negligence and/or he was incompetent in the practice of medicine in his care and treatment of Patients NR and/or NZ, including but not limited to the following:

A. Respondent failed to determine and document a treatment plan and objectives to treatment by which to evaluate NR's progress, including discussion of non-pharmacologic treatment modalities such as transient electric nerve stimulation (TENS), acupuncture, or referral to a physical rehabilitation specialist.

B. Respondent failed to obtain and document informed consent with regard to the risks and benefits of chronic opiate therapy in his treatment of Patient NR.

C. Respondent failed to document pain scales and/or objective findings of NR's condition from visit to visit and/or to document NR's psychological functioning in response to prescribed medications.

D. Respondent failed to obtain and document informed consent with regard to the risks of opiate and benzodiazepine medications, including the risk of potential overdose, in his treatment of Patient NZ.

**FOURTH CAUSE FOR DISCIPLINE**

**(Failure to Maintain Adequate and Accurate Records)**

44. The allegations of the First, Second, and Third Causes for Discipline, above, are incorporated herein by reference as if fully set forth.

45. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2266 of the Code in that Respondent failed to maintain adequate and accurate records with regard to his care and treatment of Patients KH and/or JU and/or NR and/or NZ, as alleged in the First and/or Second and/or Third Causes for Discipline.

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## FIFTH CAUSE FOR DISCIPLINE

**(Gross Negligence/Repeated Negligent Acts/Incompetence)**

46. An investigation in Medical Board Case Number 800-2017-033240 identified additional misconduct by Respondent similar to that set forth above. The investigation focused on Respondent's treatment of four additional patients for chronic pain. Respondent exhibited deficiencies in his care of these patients similar to those alleged in the First, Second, Third, and Fourth Causes for Discipline, above. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234 (b) and/or (c) and/or (d) of the Code in that Respondent was grossly negligent, and/or he engaged in repeated acts of negligence, and/or he was incompetent in the practice of medicine in his treatment of the patients at issue in investigation Number 800-2017-033240. In addition, Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2266 of the Code in that Respondent failed to maintain adequate records with regard to his treatment of the patients at issue in investigation Number 800-2017-033240.

DISCIPLINE CONSIDERATION

47. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about December 9, 1993, an Accusation was filed against Respondent in Medical Board of California Case No. D-5589. The Accusation alleged violations of section 2234 (b), (c), and (d) [gross negligence, repeated negligent acts, incompetence] of the Code with respect to Respondent's care and treatment of a single oncology patient. Respondent entered into a stipulation in Case No. D-5589 and in a Board Decision effective October 24, 1994, Respondent's license was revoked, the revocation was stayed, and Respondent's license was placed on probation for five (5) years with terms and conditions. That decision is now final and is incorporated by reference as if fully set forth.

## PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

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1. Revoking or suspending Physician's and Surgeon's Certificate Number G 49302, issued to Hon Yuen Chan, M.D.;

2. Revoking, suspending or denying approval of Hon Yuen Chan, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Hon Yuen Chan, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and,

4. Taking such other and further action as deemed necessary and proper.

DATED: February 23, 2018

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
*Complainant*

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